
ENGROSSED SUBSTITUTE HOUSE BILL 1701

State of Washington

62nd Legislature

2011 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Ormsby, Green, Sells, Kenney, Van De Wege, Hasegawa, Hudgins, Moeller, Miloscia, Sullivan, Upthegrove, Pettigrew, Seaquist, Hunter, and Frockt)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to the underground economy by addressing the loss
2 in state revenue through misclassification of workers as independent
3 contractors in the construction industry; amending 2009 c 432 s 13
4 (uncodified); adding new sections to chapter 18.27 RCW; creating a new
5 section; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that the state loses
8 over one hundred million dollars a year in taxes due to underground
9 economy construction activity, causing great inequity to law-abiding
10 businesses and taxpayers. The legislature further finds that an
11 employer in construction is required to pay industrial insurance and
12 unemployment taxes for a worker unless a seven-part independent
13 contractor test is met, which test includes that the worker is free
14 from direction and control and has his or her own books and records.
15 The legislature finds that some contractors avoid taxes by engaging
16 multiple contractors to work on the same task and treating the
17 contractors as exempt independent contractors rather than hiring and
18 paying taxes on these persons as covered workers. The legislature
19 finds, however, that if multiple contractors are working on the same

1 task on a job site, the contractors must be working under direction and
2 control such that they are not exempt independent contractors but are,
3 in fact, covered workers.

4 The legislature finds that the seven-part test is and should
5 continue to be applied in investigations of underground economy
6 activity in the construction industry. However, the legislature also
7 finds that prohibiting up front certain contracting which by its nature
8 creates a situation in which taxes due are not paid will provide
9 clarity to contractors and provide an additional cost-effective means
10 to reduce the underground economy. By enacting section 2 of this act,
11 the legislature intends to define the prohibited contracting narrowly
12 to assure no legitimate contracting is prohibited. The legislature
13 intends that nothing in section 2 of this act prohibits a contractor
14 from engaging more than two independent contractors who have no covered
15 workers to work on the same task so long as those contractors are
16 treated as covered workers.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.27 RCW
18 to read as follows:

19 (1) It is a violation under this chapter and an infraction for any
20 contractor to engage more than two independent contractors to work on
21 or in a single building who:

- 22 (a) Are working on the same task involving a similar material;
- 23 (b) Bring no workers to work on or in the building subject to the
24 mandatory coverage of Title 51 RCW; and
- 25 (c) Are not being treated by the contractor as covered workers
26 under Title 51 RCW.

27 (2)(a) A contractor found to have committed an infraction under
28 this section shall be assessed a fine of:

- 29 (i) Five hundred dollars for a first offense. However, the
30 director shall waive the fine if the contractor registers for a
31 department-approved training class within ten days of receiving a
32 notice of infraction, completes the class within one hundred twenty
33 days of receiving the notice of infraction, and pays the class fees
34 upon class registration;
- 35 (ii) Two thousand five hundred dollars for a second offense; and
- 36 (iii) Five thousand dollars for a third or subsequent offense.

1 (b) For a third or subsequent offense under this section, the
2 director shall also suspend the contractor's certificate of
3 registration for one year.

4 (c) In addition to any other penalty, the director shall suspend
5 the registration of the contractor until payment of penalties assessed
6 under this section that have become final are paid in full.

7 (3) For purposes of this section, "task" means a single risk
8 classification as defined in rule under Title 51 RCW.

9 (4) Classes offered under subsection (2) of this section may be
10 conducted or approved by the department. Registrants must pay a fee to
11 cover the cost of administering the class.

12 (5) This section does not apply to work performed on residential
13 wood frame construction up to four stories in height.

14 **Sec. 3.** 2009 c 432 s 13 (uncodified) is amended to read as
15 follows:

16 The department of labor and industries, the employment security
17 department, and the department of revenue shall coordinate and report
18 to the appropriate committees of the legislature by December 1st of
19 each year on the effectiveness of efforts implemented since July 1,
20 2008, to address the underground economy. Beginning on December 1,
21 2012, the report shall include the effectiveness of section 2 of this
22 act. The agencies shall use benchmarks and measures established by the
23 institute for public policy and other measures it determines
24 appropriate.

25 NEW SECTION. **Sec. 4.** Section 3 of this act is codified as a new
26 section in chapter 18.27 RCW.

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